IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13047 of 2007

DATE OF DECISION: 27.8.2007

Suresh Kumar

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. D.R. Bansal, Advocate,
for the petitioner.

JUDGMENT

M.M. KUMAR, J.

Challenge in this petition filed under Article 226 of the Constitution is to the notification dated 10.11.2005 (P-9) and recovery certificate dated 12.6.2007 (P-8), which has been issued by exercising power in pursuance to the aforementioned notification.

Brief facts of the case are that the petitioner purchased a sick unit in an open auction on 9.10.2002 at a price of Rs. 12 lacs. In that regard an agreement dated 30.12.2002 (P-2), detailing mode of payments, instalments and other conditions agreed to between the parties was executed. A guarantee form was also got filled in from the petitioner (P-3). The petitioner deposited 25% of the auction money and the rest was to be paid in instalments as per terms of the agreement. The mode of payment is specified in sub-clause (i) of clause 4 of the agreement to sell and the same reads as under:-

> "4. The purchaser hereby covenants with the seller as follows:-

i) The purchaser shall pay to the seller the balance amount of Rs. 9,00,000/- (Rs. Nine lacs only) in 12 quarterly instalments of Rs. 75,000/- each payable on 1st of March, 1st of June, 1st of September & 1st of December of each year,the 1st quarterly instalment will be paid on 01.03.03 and last instalment of principal and interest will be paid on 1st December, 2005 together with interest @ 15.5% p.a. quarterly rests at the discretion of the Corporation and will in case and so long as the said sum of any part thereof shall remain unpaid pay to the Corporation, interest on the said sum or any part thereof as shall be paid alongwith above instalments on the due dates mentioned above at the discretion of the Corporation. Further rebate of 1% p.a. shall be allowed to the regular purchaser borrowers in case he is regular in the repayment of the four consecutive quarterly installments provided however that the consecutive quarterly installments provided however that the interest rate can be revised till the loan account is adjusted by the Corporation the interest tax or any other liability related to interest on loan. However, penal interest @ 3% p.a. shall be charged over and above the rate of interest mentioned above if charged over and above the rate of interest mentioned above if instalments of principal and interest are not paid on the due date will be charged on the amount in default and for period in date will be charged on the amount in default and for period in default. Further penal interest @ 3% p.a. shall be charged on over due amount upto one year and in case if defaults persist beyond one year, penalty on entire default shall be imposed @ 4% p.a."

It is conceded that the petitioner after depositing 25% amount has not deposited any amount, which has led to the issuance of recovery certificate as arrears of land revenue, dated 12.2.2007 (P-8). It is also pertinent to mention that the respondent Corporation has also incorporated and adopted the provisions of Sections 29 and 30 of the State Financial Corporations Act, 1951 (for brevity, 'the Act'), as part of the agreement as is evident from a perusal of sub-clause (xi) of clause 4 of the agreement.

It is undisputed that the Government in terms of Section 32-G of the Act, has delegated the authority vide notification dated 10.11.2005 (P-9) to the Managing Director of the Haryana Financial Corporation for the purposes of the said Section. In pursuance to the notification, the Managing Director has addressed a letter to the Collector of the area for recovery of the outstanding amount (75% of the amount). Both the aforementioned orders are subject matter of challenge.

After hearing learned counsel at a considerable length, we find that Section 32-G of the Act postulate delegation of power for the purposes of that Section to any authority. It is appropriate to read Section 32-G of the Act, which is as under:-

> "32-G. Recovery of amounts due to the Financial Corporation as an arrear of land revenue. – Where any amount is due to the Financial Corporation in respect of any accommodation granted by it to any industrial concern, the Financial Corporation or any person authorised by it in writing in this behalf, may without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to it, and if the State Government or such authority, as the Government may specify in this behalf, is satisfied, after following such procedure as may be prescribed, that any amount is so due,

> it may issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue." (emphasis added)

A perusal of the aforementioned section shows that a special provision for recovery of dues of the financial corporation has been made which enable the corporation to adopt a peculiar mode. An application is required to be made by the Corporation like Haryana Financial Corporation-respondent No. 2 to the State Government for recovery of its amount due. If the State Government or such authority as the Government may specify in that behalf is satisfied that any such amount is due, it may issue a certificate for the recovery of such amount to the Collector. The Collector is then under obligation to proceed to effect recovery of the amount in the same manner as an arrears of land revenue. It is obvious from a bare reading of the section that the State Government or such authority, which State Government in that behalf may specify, after recording satisfaction with regard to the dues of the corporation, may issue a recovery certificate to the Collector. In the present case, powers have been delegated to the Managing Director of the Haryana Financial Corporation-respondent No. 2, who is to record his satisfaction with regard to the amount due. It has not been disputed that the petitioner has not paid any dues of the corporation after paying 25% of the total auction amount and there are clauses in the agreement between the parties for recovery of the balance amount in case of default. Therefore, we do not find that the notification dated 10.11.2005 (P-9) suffers from any illegality merely because the authority has been vested in the Managing Director of the respondent Corporation. It is true that no person can be a judge in his own cause. But the question as to whether this principle would apply to the notification dated 10.11.2005 (Annexure P-9) vesting the power with the Managing Director of the respondent-

corporation, the matter is no longer *res integra*. A Division Bench of this Court in the case of **Shakuntla Nayar v. Punjab Financial Corporation, (Civil Writ Petition No. 17098 of 2001, decided on 07.05.2002)** has upheld the notification and the view taken by this Court was accepted by Hon'ble the Supreme Court. The view taken by the Delhi High Court in the case of **Rajeev Anand v. Union of India, (1998) 93 Company Cases 89**, was contrary to the view taken by a Division Bench of this Court. This Court in Shakuntla Nayar's case (supra) had not accepted the view of Delhi High Court in Rajeev Anand's case (supra). Hon'ble the Supreme Court placing reliance on a constitution Bench judgment rendered in the case of **Lachhman Dass v. State of Punjab, AIR 1963 SC 222**, **Malik Ram v. State of Rajasthan, AIR 1961 SC 1575** and **Accountant and Secretarial Services (O) Ltd. v. Union of India, (1988) 4 SCC 324** has held in the case of Rajeev Anand's case (supra) as under:

> "14. Thus, the authorities disclose that mere appointment of an officer of the corporation does not by itself bring into play the doctrine that "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting. This being the law it will have to be held that the decision of the Delhi High Court is erroneous and cannot be sustained and the view taken by the Punjab and Haryana High Court is correct. It will, therefore, have to be held that Managing Director of a financial corporation can be appointed as an authority under Section 32-G of the Act."

In view of the afore-mentioned enunciation of law upholding the appointment of Managing Director as the authority of the State

Government under Section 32G of the Act, the notification dated 10.11.2005 (Annexure P-9) deserves to be upheld and accordingly the letter dated 12.,6.2007 addressed to the Collector would not be open to any challenge. Thus, we do not find any merit in the petition warranting its admission and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 27, 2007

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